IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 533 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)

Versus

JAYANTIBHAI KUBERBHAI CHAVADA - Respondent(s)

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Appearance :
MR KL PANDYA AGP for Petitioner No(s).: 1.
MR TR MISHRA for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 25/07/2005

ORAL JUDGMENT

1.0 The petitioner State has challenged the award dated 19.06.1999 passed by the Labour Court, Ahmedabad in Reference (LCA) No.1594 of 1996, whereby the petitioner was directed to reinstate the respondent to his original post with continuity of service and 50 % back wages from

16.10.1994.

2.0 The brief facts of the case are that the respondent herein was working with the petitioner on daily wages as a Tracer from 25.11.1982 and without giving any intimation, the services of the respondent were terminated.

2.1 Against the said action, the respondent raised a dispute by way of a reference before the Labour Court, Ahmedabad. The Labour Court, by impugned award, allowed the said reference as aforesaid. Hence, this petition.

3.0 While admitting the matter on 02.02.2000, this Court by way of interim relief had stayed the implementation of the impugned award subject to the direction that during the pendency of the present petition, the respondent shall be treated as a daily wager and placed in the list of daily wagers as on 20.09.1985 and shall be offered work accordingly. However, since the directions issued by this Court were not complied with, Civil Application No.3029 of 2005 came to be filed by the respondent. In the said application the learned A.G.P submitted as under;

> “2. The learned A.G.P submitted that an order has already been passed for reinstatement of the applicant workman on 28.04.2005, a copy of which has been given to the learned counsel for the applicant. It is also submitted by the learned A.G.P that the applicant workman has also resumed his duty. So far as back wages are concerned, the petition has already been admitted and therefore, the order may not be modified by this Court. Pursuant to the order dated 26.04.2005, Mr. Arif Nannubhai Shaikh, Deputy Secretary, Road and Building Department, Government of Gujarat, is personally present before this Court.”

4.0 In above view of the matter, since the respondent is already reinstated, the same is not considered on merits and the respondent shall be entitled for all benefits from the date of the publication of the award. So far as the question of continuity of service is concerned, the same is also considered by this Court while admitting the matter. Hence, the only question which is required to be considered by this Court in with regard to grant of 50 per cent back wages.

5.0 In the impugned award, the Labour Court has not given any cogent reasons as to on what basis it has awarded back wages to the respondent. No reasons have been assigned by the Labour Court while awarding back wages to the respondent. Moreover, in view of the

principle laid down by the Apex Court in the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C. pg.137, wherein it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order, the order awarding back wages is required to be quashed and set aside.

6.0 In above view of the matter, this petition is partly allowed. The impugned award of the Labour Court is modified to the extent that the direction qua granting reinstatement with continuity in service is confirmed; and, the direction qua awarding 50 % back wages is quashed and set aside. The respondent shall be given the benefit of continuity of service as on 30.09.1985 as directed by this Court and shall be given all benefits from the date of the publication of the award till he is reinstated in service. The said benefits to be paid within a period of three months from the receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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